

STATE OF OREGON  
HOUSING AND COMMUNITY SERVICES DEPARTMENT

RENT GUARANTEE PAYMENT PROGRAM

AGREEMENT # 01182

City Of Portland Agreement No. 30001681

This Rent Guarantee Payment Program Agreement (this "Agreement") is hereby entered into by and between the State of Oregon, acting by and through its Housing and Community Services Department, together with its successors and assigns ("OHCS"), and the City of Portland, together with its successors and assigns ("Program Provider").

RECITALS

- A. Certain low-income residents of the State of Oregon find that past credit, criminal or tenant performance history poses a significant impediment to securing present safe and affordable rental housing.
- B. Appropriate training in personal budgeting, tenant/landlord relationships and other relevant matters may assist such persons in becoming more attractive and successful tenants.
- C. Providing rent or security deposit guarantees to prospective landlords may induce landlords to offer housing to persons who have received budgeting, tenant/landlord relationships and other training, but who otherwise might not be deemed by such landlords as acceptable tenants.
- D. OHCS is willing to provide reimbursement funding for allowable rent guarantees consistent with the terms of this Agreement in order to increase the rental success of persons qualified under its Rent Guarantee Program ("Program").
- E. Program Provider is willing to select and train low-income Oregon residents to be successful tenants consistent with the Program or to enter into a partnership agreement with other agency(s) who provide Tenant Readiness Training for such Oregon residents consistent with the Program.
- F. Program Provider is willing to act consistently with the Program to assist training graduates to obtain safe and affordable rental housing. The Program Provider is also willing to do outreach to landlords to increase their willingness to provide housing for such persons in return for rent guarantees.
- G. Program Provider is willing to pay the allowable cost to landlords for claims associated with the Program guarantee.
- H. OHCS is willing to reimburse Program Provider on appropriate guarantee claims subject to receiving satisfactory documentation of such claims and approving the claim as satisfying Program requirements.
- I. Program Provider is willing to track individual trainees and landlords involved with the Program and to account to OHCS for the guarantee funds and claims as outlined in this Agreement. Program Provider also is willing to prepare and submit to OHCS such Program reports, claims and other information as identified in this Agreement on a timely basis and in an appropriate manner.

J. OHCS and the Program Provider are willing to cooperate with one another in order to realize the purposes of the Program.

## AGREEMENT

In consideration of the terms and conditions set forth below and for other valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, do hereby agree and covenant as follows:

### SECTION 1

#### DEFINITIONS

When used in this Agreement, its Exhibits, and any amendments hereto, capitalized terms shall have the meanings set forth in this Section, otherwise in this Agreement or in related Program regulations, unless the context clearly requires otherwise.

- 1.1 **"Eligible Participants"** mean persons with a household income not greater than sixty percent of area median family income and meeting other tenant criteria for Program participation consistent with the terms of this Agreement and related Program regulations who are approved for Program participation by the Program Provider.
- 1.2 **"Landlord(s)"** means owner(s) or operator(s) of appropriate residential rental housing who meet the terms and conditions of this Agreement and of the Program as determined by OHCS.
- 1.3 **"Rent Guarantee Program" or "Program"** means the program described in this Agreement and in related regulations pursuant to which OHCS issues conditional Rent Guarantee Payment reimbursements to repay Program Provider for appropriate and approved Rent Guarantee Payments it makes to Landlords on behalf of Eligible Participants who successfully complete appropriate Tenant Readiness Training arranged for or provided by the Program Provider.
- 1.4 **"Rent Guarantee Payment(s)"** means the payment(s) made by the Program Provider consistent with this Agreement, Program regulations, and OHCS directives to approved Landlords to cover such expenses as unpaid rent, costs to evict a nonperforming Eligible Participant household, and allowable apartment repair costs within the Program limit of \$2,000 per Eligible Participant household for which the Program Provider may seek reimbursement from OHCS.
- 1.5 **"Rental Guarantee Funds"** means the funds in the maximum amount set aside by OHCS pursuant to this Agreement and Program regulations in an OHCS account and available to the Program Provider under the terms of this Agreement and Program regulations for the purpose of reimbursing Program Provider for appropriate Rent Guarantee Payments it makes to Landlords.
- 1.6 **"Tenant Readiness Training"** means a Program curriculum of personal budgeting, tenant/landlord relationships and other relevant matters acceptable to OHCS taught to Eligible Participants by certified teachers under the auspices of the Program Provider.
- 1.7 **"Trainer"** means a person acceptable to OHCS qualified and selected by the Program Provider to provide Tenant Readiness Training to Eligible Participants consistent with this Agreement.

## SECTION 2

## TERM AND TERMINATION OF AGREEMENT

- 2.1 **Term.** This Agreement covers the period from July 1, 2010 through June 30, 2011, and shall become effective on the date this Agreement has been signed by every party hereto and, when required, approved by the Department of Justice.
- 2.2 **Termination.** Either party may terminate this Agreement, without cause, upon 30 days written notice to the other party. Commitments to make Rent Guarantee Payments made by Program Provider to Landlords within the 30-day notice period shall require approval by OHCS to be eligible for reimbursement by OHCS. Any Rent Guarantee Payment commitments by Program Provider to Landlords after the close of the 30 day notice shall not be eligible for reimbursement by OHCS. Appropriate commitments by Program Provider to make Rent Guarantee Payments made in writing to Landlords prior to the 30-day notice period will be eligible for reimbursement by OHCS pursuant to the terms of this Agreement.
- 2.3 **Notice of Termination.** Either party may terminate this Agreement immediately by written notice for cause or upon a material breach by the other party of one or more of the terms of this Agreement. Upon delivery of such notice of termination, no further Rent Guarantee Payments shall be eligible for reimbursement. Events of cause may include:
- a. Federal or state laws, regulations or guidelines are modified or interpreted in such a way that OHCS is prohibited from paying for or lacks authority to pay for any Work performance under this Agreement or to pay for any such performance from the planned funding source(s);
  - b. Funding, appropriations, limitations or expenditure authorization to expend funds is denied, suspended, reduced or eliminated;
  - c. Any certification, license or certificate required by law to be held by Program Provider or others to provide the services required by this Agreement is for any reason denied, revoked, suspended, limited or not renewed; or
  - d. A material breach of this Agreement, including of related Program regulations.
- 2.4 **Continuation of Remedies.** Notwithstanding the above subsections, termination of the Agreement shall not terminate any remedies available to the parties under this Agreement or at law, including but not limited to remedies for damages sustained by virtue of any breach of this Agreement. OHCS, without limiting any other rights, may withhold any remaining reimbursements of Rent Guarantee Payments to the Program Provider due under this Agreement and employ same to compensate itself for damages arising from or related to any breach by Program Provider of this Agreement.

## REPORTING REQUIREMENTS

- 3.1 Maintenance of Program Workbook.** Program Provider shall maintain a Program Workbook in a format provided by or acceptable to OHCS. The Workbook shall include relevant statistical information about Program applicants and Eligible Participants satisfactory to OHCS and be used by Program Provider in developing of Quarterly and Annual reports satisfactory to OHCS. Program Provider shall submit all reports and such other information, including the completed Workbook, as may be requested by OHCS to OHCS in a timely manner.
- 3.2 Quarterly Reports.** Program Provider shall deliver Quarterly Reports, with a copy of the up-to-date Workbook, to OHCS not later than thirty (30) days from the end of each fiscal quarter.
- 3.3 Annual Report.** Program Provider shall deliver the Annual Report, with a copy of the completed Workbook, to OHCS not later than July 30, 2011.
- 3.4 Required Information.** Program Provider shall, *inter alia*, report in each Quarterly Report and in the Annual Report the following information with respect to each Eligible Participant:
- a. Last name, first name, and middle initial;
  - b. Monthly gross household income;
  - c. Guarantee start date;
  - d. Head of household age;
  - e. Head of household gender;
  - f. Size of household;
  - g. Total number of children in household;
  - h. Whether or not the household Rent is subsidized;
  - i. Number of veterans in household;
  - j. Number of released offenders in household;
  - k. The Rent Guarantee end date;
  - l. If the Eligible Participant completed the Rent Guarantee contract period;
  - m. Any Rent Guarantee Payment claim paid by Program Provider;
  - n. Program Provider certification that:
    - 1. The above Eligible Participants have completed and been certified in the Tenant Readiness Training;

2. The residences for the above Eligible Participants have been screened for pre-existing condition;
  3. The individual records for the above Eligible Participants are on file, including landlord and tenant communications; and
  4. The respective Eligible Participants meet the Program low-income requirements established for Tenant Readiness Training eligibility.
- o. Such other information as OHCS may require.
- 3.5 **E-mail Submission of Reports, Workbook and Other Information.** Program Provider shall submit the Quarterly and Annual Reports, together with the completed up-to-date Workbook and other requested information to the OHCS Agreement Administrator by e-mail on or before the dates indicated above. Additional information requested by OHCS shall be similarly submitted to OHCS unless otherwise directed by OHCS. Such additional information shall be submitted to OHCS within the time period given in the request from OHCS.

## SECTION 4

### COVENANTS AND COMMITMENTS OF PROGRAM PROVIDER

The Program Provider hereby agrees, covenants, and commits as follows:

- 4.1 **Program Administration.** Program Provider shall administer the Program in a satisfactory manner in accordance with the terms of this Agreement, in accordance with Program regulations as amended from time to time, and in accordance with directives from OHCS.
- 4.2 **Monitor and Limit Commitments.** Program Provider shall not make Rent Guarantee Payment commitments in excess of Rent Guarantee Funds available to Program Provider under this Agreement. Program Provider shall regularly monitor the amount of Rent Guarantee Payment commitments to ensure that outstanding commitments of, together with any paid claims for, Rent Guarantee Payments, are within the maximum amount and other restrictions concerning Rent Guarantee Funds applicable under this Agreement.
- 4.3 **Program Guidelines.** Program Provider shall establish Tenant Readiness Training content and instruction standards and other Program standards in conformity with this Agreement, Program regulations, OHCS directives, and in consultation with and subject to the approval of OHCS. Program Provider shall adhere to such standards, terms, regulations and directives in administering its Program. Program standards must, *inter alia*, include conforming limitations on income for qualification as an Eligible Participant consistent with this Agreement, detailed criteria for the Tenant Readiness Training curriculum and for teacher certification, the terms of any agreement, and particularly Rent Guarantee Payment agreements, with Landlords under the Program, and other matters as deemed appropriate or necessary by OHCS.
- 4.4 **Records Maintenance.** Program Provider shall maintain records acceptable to OHCS in order to verify compliance with this Agreement, Program regulations, OHCS directives, and Program Provider Program standards. Program Provider shall make such records available for inspection and copying by OHCS upon reasonable notice. In addition to Quarterly and Annual Reports,

including an up-to-date Workbook, Program records shall include a record of each Program applicant and a file for each Eligible Participant. Each record with respect to a rejected Program applicant shall include a written statement and reasonable documentation relating the basis for rejection. The file for each Eligible Participant household shall include the basis and reasonable documentation supporting acceptance into the Program, a listing of the dates the Eligible Participant attended Tenant Readiness Training, the date Eligible Participant successfully completed Tenant Readiness Training, the date of any Rent Guaranty Payment commitment made to a Landlord with respect to the Eligible Tenant, relevant information about the condition of the rented unit or home for which the Rent Guarantee Payment commitment was issued, relevant correspondence, receipts, notices, and other information concerning the Eligible Participant's compliance and Rent Guarantee Payment commitments, payments or reimbursements.

- 4.5 **Limitation on Program Eligibility.** Program Provider shall limit by agreement with Landlords the period for which Landlords will be eligible for Rent Guarantee Payments for each Eligible Participant household to a maximum of one year from the date that the Rent Guarantee Payment commitment is initiated, to limit by agreement with Landlords the total amount of any Rent Guaranty Payment commitment with respect to each Eligible Participant household to the amounts specified in Section 1.4 above, and to allow by agreement with Landlords and Eligible Participants for OHCS and the Program Provider a nonrevocable right to inspect the residences of all Eligible Participants upon reasonable notice. Program Provider also shall limit the Rent Guarantee Payment commitments issued on behalf of any Eligible Participant household to a maximum of 12 months per placement, and to limit each Eligible Participant household to two housing placements covered by the Rent Guarantee Payment contingent on no claims filed for that participant. To only issue Rent Guarantees to participants who have completed the Tenant Readiness Training within the 18 months prior to the issuance of the Rent Guarantee.
- 4.6 **Changes.** Program Provider shall administer a Tenant Readiness Training curriculum for all Eligible Participants in manner and substance satisfactory to OHCS and promptly notify OHCS of material changes to such curriculum or related operating procedures.
- 4.7 **Eligibility Limitations.** Program Provider shall restrict Rent Guarantee Payments per Eligible Participant household to a maximum of \$2,000 and shall limit request reimbursement from OHCS for Rent Guarantee Payments to such actual and appropriate amounts paid to Landlords pursuant to this Agreement and not otherwise.
- 4.8 **Deferral and Corrective Action.** Program Provider shall act promptly to effect deferral and corrective action necessary or appropriate to ensure compliance by Eligible Participants, Landlords, and itself (including its officers, employees, agents, representatives, and subcontractors) with Program requirements, including but not limited to OHCS directives.
- 4.9 **Restriction on Participation.** Program Provider shall restrict participation in the Program in a manner consistent with this Agreement, Program regulations and OHCS directives.
- 4.10 **Monitoring and Cooperation.** Program Provider shall monitor participation in the Program by Landlords, Trainers, and Eligible Participants to ensure compliance with Program requirements. Program Provider shall cooperate with OHCS in any review by OHCS of Program performance, including but not limited to cooperating in inspections of Eligible Participant residential housing, observation and critique of Tenant Readiness Training, and inspection and copying of Rent Guarantee Payment and Rent Guarantee Payment claims records and supporting documentation.

- 4.11 Return of Overpayments.** Project Provider shall promptly return all overpayments, if any, of reimbursements from OHCS for Rent Guarantee Payments, and not later than thirty days after the end of each calendar quarter.
- 4.12 Allowable Expenses.** Expenses incurred by the Program Provider eligible for reimbursement from OHCS as allowable Rent Guarantee Payments, subject to Program limits and the terms of this Agreement, include:
- a. Reasonable repairs to or replacement of fixtures or of the structure of qualified residential housing provided by Landlords to Eligible Participant households for damage beyond the normal wear and tear of tenant occupancy actually caused by Eligible Participant household members;
  - b. Unpaid rent;
  - c. Reasonable expenses related to removal of excessive debris left by Eligible Participant households, including disposal fees;
  - d. Reasonable costs to evict nonperforming Eligible Participant households from qualified residential housing provided by Landlords, including court filing fees, attorney fees, and costs of serving appropriate notices, provided that Landlord does not also file a judgment against any members of the Eligible Participant household for such costs.
  - e. Such other costs approved in writing by OHCS.
- 4.13 Unallowable Expenses.** Expenses of the Program Provider not eligible for reimbursement by OHCS under this Agreement include, but are not limited to:
- a. Late fees on rent;
  - b. Costs to change locks, except if the door or door-jam associated with the lock also is functionally damaged in a material way and such damage is caused by a member of the Eligible Participant household and the lock must be replaced as part of the reasonable repair, or if the lock is for a common-use room or building and has been functionally damaged in a material way by a member of an Eligible Participant household; and
  - c. Repair or replacement costs associated with residential housing provided by Landlords that, under industry standards, would be deemed to be due to normal wear and tear of tenant occupancy.
  - d. Expenses otherwise inconsistent with this Agreement, Program regulations, or OHCS directives.

OHCS shall have final say with respect to whether or not Program Provider expenses qualify or fail to qualify for reimbursement.

#### 4.14 Invoicing.

- a. Program Provider shall submit invoicing to OHCS no more than monthly for reimbursement of Rent Guaranty Payments made to Landlords.
- b. Invoicing from Program Provider to OHCS for Rent Guarantee Payment reimbursement shall be delivered to OHCS consistent with OHCS directives and include, *inter alia*, the Landlord's name, the name of the Eligible Participant, the name and address of the residential housing project, itemized and detailed expense reports, and such other information as OHCS may require.
- c. Program Provider shall retain, and have available for inspection or submittal to OHCS upon its request, copies of (i) Landlord/Eligible Participant rental agreements, (ii) relevant judgments and other legal documents, (iii) attorney invoices and related documentation, (iv) cancelled checks and other evidence of Rent Guarantee Payments, (v) Landlord/Eligible Participant move in/ move out forms, repair or replacement description and expense documentation; and (vi) such other information as OHCS may require.

### SECTION 5

#### COVENANTS AND COMMITMENTS OF OHCS

OHCS agrees, covenants, and commits as follows:

- 5.1 Reimbursement Commitment.** OHCS commits to reimburse Program Provider for its appropriate and approved Rent Guarantee Payment expenditures for up to 112 Eligible Participants, subject to the terms and conditions of this Agreement, from Rent Guarantee Funds up to the not-to-exceed amount of \$224,000.
- 5.2 Review and Response to Reimbursement Requests.** OHCS will act reasonably to review and respond to requests for reimbursement of Rent Guarantee Payment expenditures from the Program Provider.
- 5.3 Reimbursement upon Approval.** OHCS will act reasonable to reimburse Rent Guarantee Payment expenditures made by the Program Provider upon and to the extent of OHCS approval of same.
- 5.4 Consultation with Program Provider.** OHCS will act reasonably to consult with and notify the Program Provider regarding OHCS expectations and requirements concerning the Program, including but not limited to record keeping, Rent Guarantee Payments and reimbursement of same, Tenant Readiness Training, compliance monitoring, and other Program matters.
- 5.5 Notice of Requirements and Deficiencies.** OHCS will act reasonably to notify the Program Provider of Program requirements and performance deficiencies or defaults. Notwithstanding the foregoing, the failure by OHCS to provide notice to Program Provider under this subsection will neither constitute a waiver or release by OHCS of any rights or remedies it may have under this Agreement, or otherwise, nor act as a bar against OHCS' exercise of such rights or remedies. Furthermore, notice to Program Provider by OHCS under this subsection neither is a precondition to the exercise by OHCS of any rights or remedies it may have under this Agreement, or otherwise, nor does failure by OHCS to provide notice to Program Provider under



this subsection constitute a defense to Program Provider for any performance default or deficiency or otherwise excuse Program Provider from liability for any such performance default or deficiency.

- a. Upon notice to the Program Provider, OHCS may terminate the Agreement or Program permanently, or suspend additional participation in the Program or performance under this Agreement, including but not limited to the enrollment of Eligible Participants and additional commitments with Landlords for Rent Guarantee Payments, until deficiencies are resolved to the satisfaction of OHCS.

## SECTION 6

### REMEDIES

- 6.1 **Agreement Remedies.** OHCS may, at its option, exercise any and all remedies previously provided to it under this Agreement according to their terms.
- 6.2 **Additional Remedies.** Upon any material breach of this Agreement and in addition to any other remedy provided in this Agreement, OHCS may, at its option, also exercise any one or more of the following remedies:
  - a. By mandamus or other suit, action or proceeding at law or in equity, require Program Provider specifically to perform its obligations under this Agreement, seek a declaratory judgment with respect to the rights and obligations arising under this Agreement, or enjoin any act or thing that may be unlawful or contrary to the terms and conditions of this Agreement;
  - b. Have access to, and inspect, examine and make copies of, all of the books and records of Program Provider pertaining to this Agreement or the Program;
  - c. Withhold from Program Provider, suspend or terminate, all or part of any undisbursed Rent Guarantee Payment funding under this Agreement;
  - d. Demand repayment of all Rent Guarantee Payment funding provided by OHCS to Program Provider under this Agreement upon a determination by OHCS that such funding amounts were provided to Program Provider based upon misleading, inaccurate or incomplete information received from Program Provider or if such Rent Guarantee Payment funding amounts constitute an overpayment of reimbursements due under this Agreement, and such amounts shall be immediately due and payable from Program Provider to OHCS following thirty (30) days from such written demand;
  - e. Declare Program Provider ineligible to receive further Program or other OHCS financial assistance for such period as OHCS determines in its sole discretion; or
  - f. Take such other action at law, in equity, or otherwise as may be available to OHCS.
- 6.3 **Remedies Nonexclusive.** The rights and remedies of OHCS provided for in this Agreement shall not be exclusive and are in addition to any other rights and remedies available at law, in equity or otherwise. No failure of or delay by OHCS to enforce any provision of this Agreement shall constitute a waiver by Department of that or any other provision, nor shall any single or

partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.

## SECTION 7

### NOTICE

- 7.1 **Notice.** Except as otherwise expressly provided in this Agreement, any notices required or permitted to be given under this Agreement shall be given in writing, by personal delivery, or mailing the same, postage prepaid, to OHCS or Program Provider at the following addresses:

OHCS: Oregon Housing and Community Services  
Attn: Vicki Massey  
725 Summer Street N.E., Suite B  
Salem, Oregon 97301-1266

Program Provider: Portland Housing Bureau  
Attn: Tracy Lehto  
421 SW 6<sup>th</sup> Ave, Suite 500  
Portland, OR 97204

- 7.2 **Effective Date of Notice.** Any notice so addressed and mailed shall be effective five (5) days after mailing. Any notice by personal delivery shall be deemed to be given when actually delivered.
- 7.3 **Change in Notice.** Either party may indicate a different address for the receipt of notice by providing notice of same to the other party consistent with the terms of this Section.

## SECTION 8

### GENERAL PROVISIONS

- 8.1 **Compliance with Applicable Law.** Program Provider shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement. Without limiting the generality of the foregoing, Program Provider expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be

so incorporated. OHCS' performance under the Agreement is conditioned upon Program Provider's compliance with the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235, and 279B.270 which are incorporated by reference herein. Program Provider shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper (as defined in ORS 279A.010(ee)), recycled PETE products (as defined in ORS 279A.010(ff)), and other recycled products (as "recycled product" is defined in ORS 279A.010(gg)).

- 8.2 Workers' Compensation.** Program Provider, its subrecipients, if any, and all employers providing work, labor, or materials under this Agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all of their subject workers. Out-of-state employers must provide Oregon worker's compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year or who otherwise constitute "subject workers" under Oregon law.
- 8.3 Independent Contractor Status; Responsibility for Taxes and Withholding.** Program Provider shall perform all Program requirements as an independent Contractor.
- a. Although OHCS may (a) determine and modify the Program requirements for Program to be performed and (b) evaluate the quality of the completed performance, OHCS cannot and will not control the means or manner of Program Provider's performance. Program Provider shall determine the appropriate means and manner of performing any Program requirements required under this Agreement. Program Provider certifies, represents and warrants that Program Provider is an independent contractor of OHCS under all applicable State and federal law. Program Provider is not an "officer", "employee", or "agent" of OHCS as those terms are used in ORS 30.265.
  - b. Program Provider is responsible for all federal and state taxes applicable to compensation or payments paid to Program Provider under this Agreement, and unless required by prevailing federal law or regulations, OHCS will not withhold from compensation or payments to Program Provider any amount(s) to cover Contractor's federal or state tax obligations unless Program Provider is subject to backup withholding. Program Provider is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Program Provider under this Agreement.
- 8.4 Amendments.** The terms of this Agreement may not be waived, altered, modified, supplemented or amended, except by written agreement of the parties.
- 8.5 Program Provider Covenants, Representations and Warranties.** Program Provider hereby covenants, represents and warrants that: (1) Program Provider has the power and authority to enter into and perform this Agreement, and (2) this Agreement, when executed and delivered, is a valid and binding obligation upon Program Provider, enforceable in accordance with its terms.
- 8.6 Dual Payments.** The Program Provider shall not be compensated for Rent Guarantee Payments made under this Agreement from any other department of the State of Oregon, or from any other source, including the Federal government, unless such funds are used solely to increase the total services to be provided under this Agreement. Any additional funds received through or for activities arising under this Agreement shall immediately be reported to OHCS.

- 8.7 Indemnity.** The Program Provider shall indemnify, save, defend (consistent with ORS chapter 180) and hold harmless the State of Oregon, OHCS, their officers, agents, employees and assigns from all claims, suits or actions of whatsoever nature resulting from or arising out of the activities or omissions of the Program Provider or its subcontractors, agents or employees under this Agreement. This indemnity provision shall not require the Program Provider to defend or indemnify the State against any action based solely on the alleged negligence of the State.
- 8.8 Expenditures Properly Supported.** Expenditures and requests for Rent Guarantee Fund assistance under this Agreement shall be supported by Program Provider with properly executed documentation, including as applicable, payroll and time records, invoices, contracts, vouchers, orders, canceled checks and/or any other accounting documents pertaining in whole or in part to the Agreement (or in the case of subrecipients, under their respective contracts with Program Provider) in accordance with generally accepted accounting principles, Oregon Administrative Rules and applicable federal requirements as specified herein. OHCS may require from Program Provider such other information as it deems necessary or appropriate in its sole discretion.
- 8.9 Records Maintenance.** In addition to other records maintenance and disclosure requirements under this Agreement, Program Provider shall, and shall by contract require its subcontractors and subrecipients to, prepare and maintain such records as necessary for performance of and compliance with the terms of this Agreement. Program Provider shall, and by contract shall require its subcontractors and subrecipients to, retain all records pertinent to expenditure incurred under this Agreement for a period consistent with those listed in Oregon Business Development Departments Record Retention Schedule, <http://www.orinfrastructure.org/assets/docs/IFA/2010CDBG-MOD/2010CDBG-MOD.pdf>, Subpart I, 570.490 Recordkeeping Requirements, page 162 of 168, as may be modified from time to time; unless required to be longer under the specific grant program requirement. Notwithstanding the above, if there are litigation, claims, audits, negotiations or other actions that involve any of the records cited, then such records must be retained until completion of the actions and resolutions of all issues.
- 8.10 Records Access.** In addition to other records access requirements under this Agreement, OHCS, the Oregon Secretary of State's Office, the federal government and the duly authorized representatives of such entities shall have free access to the books, documents, papers, audits and records of Program Provider and its subcontractors and subrecipients, which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts. These records are the property of OHCS who may take possession of them at any time after three (3) business days' notice to Program Provider, subcontractor or subrecipient, as the case may be. Program Provider, subcontractor or subrecipient, as the case may be, may retain copies of all records taken by OHCS under this Subsection. In its agreements with subcontractors and subrecipients, Program Provider shall require them to comply with the requirements of this Subsection and to grant right to access to and ownership by OHCS of the subcontractor's and subrecipient's books and records related to this Agreement.
- 8.11 Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Agreement.
- 8.12 Severability.** If any term or provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof.

- 8.13 **Execution and Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.
- 8.14 **Waiver.** The failure of either party to enforce any provision of this Agreement shall not constitute a waiver of that or of any other provision of this Agreement.
- 8.15 **Governing Law; Venue; Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between OHCS and Program Provider that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon to the extent permitted by law. If a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. OHCS and the State of Oregon neither waive any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or by execution of this Agreement. Program Provider expressly consents to the in personam jurisdiction of said courts.
- 8.16 **Assignment.** The Program Provider may not assign its rights or interests under this Agreement without the prior written consent of OHCS. OHCS may give or withhold consent at its sole discretion.
- 8.17 **No Third-Party Beneficiaries.** OHCS and Program Provider are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- 8.18 **Merger.** This Agreement, attached exhibits and referenced Program regulations and OHCS directives constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary OHCS approvals have been obtained. Such waiver, consent, modification or change if made shall be effective only in the specific instance and for the specific purpose given.
- 8.19 **Confidentiality.** The Program Provider, its subcontractors, subrecipients, employees, officers, agents and assigns shall protect the confidentiality of all information concerning applicants for and Eligible Participant receivers of Program services or benefits funded by this Agreement. They shall not release or disclose any such information except as directly connected with the administration of the Program or as authorized in writing by the applicant or Eligible Participant. All records and files shall be appropriately secured to prevent access by unauthorized persons.
- 8.20 **Program Provider Status.** Program Provider certifies to the best of its knowledge and belief that neither the Program Provider nor any of its principals:
- a. Are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from eligibility for funding or other assistance by any state or federal department, including OHCS;

- b. Have within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
  - c. Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any illegal activity; and
  - d. Have within a three-year period preceding this Agreement had one or more public transactions (federal, state, or local) terminated for cause or default.
- 8.21 **Time of the Essence.** Time is of the essence in the performance of any and all obligations under this Agreement.
- 8.22 **No Limitations on Action in Exercise of Governmental Powers.** Nothing in this Agreement is intended, nor shall it be construed, to in any way limit the actions of OHCS in the exercise of its governmental powers. It is the express intention of the parties hereto that OHCS shall retain the full right and ability to exercise its governmental powers with respect to Program Provider, the Rent Guarantee Funds, and the transactions contemplated by this Agreement to the same extent as if it were not a party to this Agreement, and in no event shall OHCS have any liability in contract arising under this Agreement by virtue of any exercise of its governmental powers.
- 8.23 **Attorney Fees.** A party prevailing in substantial part with respect to any action taken to enforce or exercise remedies with respect to the terms of this Agreement shall be entitled to payment of its reasonable attorney fees and costs from the other party as incurred prior to trial, at trial or on appeal.
- 8.24 **Municipality Data and Certification.**

Name (as on tax filing): City of Portland

Address: 1221 SW 5<sup>th</sup> Ave, 97204

Telephone #: 503-823-6863

Fax #: 503-823-5384

DUNS #: 054971197

Primary Contact Name: Tracy Lehto

Title of Primary Contact: Program Coordinator

Phone # (if different than above): 503-823-2355

Email: Tracy.Lehto@portlandoregon.gov

Fiscal Contact Name: Mike Johnson

Title of Fiscal Contact: Principal Financial Analyst

Phone # (if different than above): 503-823-4176

Email: Mike.K.Johnson@portlandoregon.gov

**Certification:** The individual signing on behalf of Program Provider hereby certifies and swears under penalty of perjury as provided in ORS 305.385(6), that to the best of Program Provider's knowledge, Program Provider is not in violation of any Oregon tax laws including, without

limitation, the state inheritance tax, gift tax, personal income tax, withholding tax, corporation income and excise taxes, amusement device tax, timber taxes, cigarette tax, other tobacco tax, 9-1-1 emergency communications tax, the elderly rental assistance program and local taxes administered by the Department of Revenue (Lane Transit District Tax, Tri-Metropolitan Transit District Employer Payroll Tax, and Tri-Metropolitan Transit District Self-Employment Tax).

## 8.25 OHCS Data.

Agreement Administrator: Vicki Massey - email: vicki.massey@hcs.state.or.us  
 Address: 725 Summer St NE, Suite B Salem OR 97301-1266  
 Phone: 503-986-2146  
 Fax number: 503-986-6705

**8.26 Signatures.** The Parties hereby acknowledge that they have read this Agreement, represent that they are the authorized signatories of the entities on whose behalf they are signing, affirm that they understand this Agreement, and agree to be bound by its terms and conditions.

### IT IS SO AGREED:

#### CITY OF PORTLAND

By: [Signature] Title: Director, Portland Housing Bureau  
 Date: \_\_\_\_\_

By: \_\_\_\_\_ Title: City Commissioner Date: \_\_\_\_\_

**APPROVED AS TO FORM**

APPROVED AS TO FORM [Signature] Title: City Attorney Date: 9/28/10

By: \_\_\_\_\_ Title: City Auditor Date: \_\_\_\_\_

#### OREGON HOUSING AND COMMUNITY SERVICES

Authorized by: \_\_\_\_\_ Date: \_\_\_\_\_  
 Victor Merced, Director or designee

#### OREGON DEPARTMENT OF JUSTICE

Approved for Legal Sufficiency by: D. Kevin Carlson, Senior Assistant Attorney General Date: August 19, 2010

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